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MESSAGE

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OF THE

GOVERNOR

OF THE

STATE OF NEW YORK

TRANSMITTED TO THE LEGISLATURE JANUARY 3, 1906.

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No. 1.

IN SENATE,

JANUARY 3, 1906.

THE GOVERNOR'S MESSAGE.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, *January* 3, 1906.

To the Legislature:

In transmitting my second annual message, I have in mind that the Constitution directs me, first, to communicate to the Legislature the condition of the State, in order that the same may be set forth clearly at the outset as a guide to proper and practical legislation on matters of taxation and appropriations, and that I am also charged with the duty of recommending such matters to the Legislature as I shall deem expedient, in order that my policy on legislation may be clearly defined. The duty to recommend carries with it the duty to aid in carrying out such recommendations.

Each department of government—legislative, executive and judicial—is restricted to the exercise of its legitimate functions and one should not be permitted to enter the domain of the

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others. Yet there is, and can be, no clear line of demarcation separating these departments and making them wholly independent of one another. Constitutional checks and balances are provided, so that no department is supreme, even in its own field. The Governor's chief duty is "to take care that the laws are faithfully executed," but the Legislature places restraints upon executive power and responsibility by its control of the public purse and of the terms and methods of appointment and removal of public officers through whose agency the governor must act. The courts may declare laws void for unconstitutionality and the Legislature may remove judges from office for cause. The Governor is responsible, to a large extent, both for the beginning and the ending of important legislation. The duty to recommend measures and the power to veto bills are his constitutional warrant for participation in the law-making functions of government, and mark the limitations beyond which he should not pass.

It is my earnest hope and confident expectation that harmony and forbearance shall continue to characterize the relations between the executive and the Legislature; that neither shall seek to shirk or shift responsibility and that the session shall be marked by the passage of all just measures and the defeat of all unworthy or base measures, should any such present themselves.

STATE DEBT.

On September 30, 1905, the close of the fiscal year, the total debt of the State amounted to $11,155,660, classified as follows:

Adirondack Park	$455,000
National Guard public defenses	200,000
Canals	10,500,660
Total	$11,155,660

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The sinking fund created for the payment of the canal debt amounted on the 30th of September, 1905, to $4,607,457.97, which, in effect, reduces the amount of the canal debt to the sum of $5,893,202.03. The debt maturing during the fiscal year consists of $1,270,000 canal improvement bonds issued pursuant to chapter 79 of the Laws of 1895, maturing January 1, 1906; $55,000 Adirondack Park bonds issued pursuant to chapter 561 of the Laws of 1895, maturing January 30, 1906, and $200,000 National guard public defense bonds, issued pursuant to chapter 672 of the Laws of 1898, $100,000 of which mature on the first days of May and November respectively. $200,000 of Adirondack Park bonds mature on the first day of February, 1907.

RECEIPTS AND EXPENDITURES.

The total receipts of the State treasury from all sources for the year ending September 30, 1905, were $29,195,569.89; the total payments were $28,479,350.51. The actual available balance on October 1, 1905, was $6,114,532.47. The total appropriations in force October 1, 1905, amount to $27,583,606.98; which is $3,504,353.10 more than the income of the last fiscal year which was applicable to the payment of appropriations. The Comptroller estimates that the revenues for the present fiscal year applicable to the expenses of government will be not less than $28,000,000. The State debt will doubtless necessarily be increased by the issue of barge canal bonds and highway improvement bonds during the coming year. Provision should, if possible, be made to pay the interest on such debt and to provide the necessary sinking fund for the payment of the principal without increasing the burdens of direct taxation. To accomplish this purpose will require economy and firm resistance to the steady tendency to increase expenditures.

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TAXATION.

The great burden of taxation is local and not State in its character, is due to the activities of the local authorities and is rapidly increasing. The cost of the city government of New York city for the past six years is as follows:

1900	$90,778,972 48
1901	98,100,413 43
1902	98,618,600 88
1903	97,119,031 10
1904	106,674,955 09
1905	110,525,259 04
The appropriations for 1906 are	116,805,490 37

The net bonded debt of New York city on December 31, 1900, was $280,895,762.45. This had risen on November 30, 1904, to $445,889,941.

All tax measures have their vigorous critics. Taken one by one, each may be shown to work hardship and injustice. Such criticisms are not always disingenuous. For example, the mortgage tax law, which is a law to equalize and reduce taxation on mortgages and to prevent tax dodging, is denounced as "pernicious double taxation." Obviously, those who make this argument seek the exemption of all mortgages from taxation, rather than the restoration of the old law under which taxation of mortgages was not only double in the sense in which that term is used, but also grossly uneven and discriminating and at a higher rate. Opponents of each form of indirect taxation state their disinterested economical belief in the general property tax, which experts in taxation say is worthy only of an age of mental and moral darkness and degradation; inequality of assessment, failure to reach personal property and incentive to dishonesty being

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among its more glaring defects. Governor Roosevelt said in 1899 that "our system of taxation is in utter confusion, full of injustices and queer anomalies." A fundamental problem which confronts the State, now as heretofore, is that of bringing about greater fairness in distributing the weight of taxation. Mediaeval survivals, selfish expedients and inequitable makeshifts should, wherever possible, be superseded by provisions that shall better realize the principles of justice which should govern the State in its relations with the citizen.

In dealing with the problem of tax reform it must be remembered that we live in a practical world, and that volunteers for the purpose of carrying the load of direct or indirect taxation will be few. Men who would not dodge their creditors have no scruples in evading the tax collector. We may content the class that opposes the mortgage tax by exempting personal property and putting the additional burden on land. We may satisfy the class that opposes the stock transfer tax by shifting the burden to transfers on the Produce Exchange, but as we tranquilize one element we arouse another, and no lasting peace is possible until a fair final settlement of the question is had.

The last session of the Legislature was characterized by special attention to the subject of raising revenues sufficient to meet the obligations of the State. Charitable bequests were exempted from the transfer tax. The mortgage tax law and the stock transfer tax law were adopted. The tax on the surplus of savings banks was allowed still to remain on the statute books. What was left undone showed a lamentable disregard for party honor. I again recommend that the tax on the surplus of savings banks be repealed, and I urge you to give the other measures a fair trial, perfecting them if necessary, before interfering with

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their fundamental principles. With proper economy the revenues of the year will be sufficient and, at present, no necessity for new taxes confronts us; but the barge canal debt and the highway improvement debt will introduce additional reasons for further study of the tax problem.

I desire to call attention to the construction given by the courts to section 181 of the tax law, imposing a license tax upon foreign corporations doing business in this State. It has been held that a foreign corporation which employs all its capital in the State of New York should be assessed upon its capital employed here and not upon its capital stock. In other words, a foreign corporation, organized say in South Dakota, can authorize and issue $3,000,000 of stock, largely diluted with water, actually employ only $200,000 in this State, do business only in this State, and have its license fee computed on the basis of $200,000; while a like domestic corporation would be required to pay an organization tax on its entire capital stock of $3,000,000. A corporation, organized elsewhere to do business in this State, and which is a foreign corporation in name only, thereby obtains an unfair advantage over the legitimate domestic corporation which is incorporated under our laws and does not seek to evade taxation.

I recommend that a commission, consisting in part of members of the Legislature and in part of persons in private life, be provided, whose duty shall be to inquire into the subject of assessment and taxation for State and local purposes, the operation and effect of the laws relating thereto, and the expediency of revising and amending such laws so as to establish a more equal and just system of raising public revenues. The time seems ripe for such a commission in this State to present a comprehensive plan to rationalize the present tax system.

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INSURANCE.

The magnitude and extent of the business of life insurance is startling, even after a year of discussion and agitation. At the end of December, 1904, 42 companies doing business in the State of New York had total gross assets of $2,454,669,436.63. For the year ending December 31, 1904, these companies had received in premiums $489,542,922.04, and they had a total income from all sources of $580,743,959.14. The disbursements for commissions to agents on this business amounted to $67,086,887.97; the salaries, medical fees and payments to employees were $36,537,255.98 and other disbursements were $33,395,686.55. The total number of policies in force December 31, 1904, of the 42 companies named, was 9,949,722, insuring $10,028,090,981. The business may be roughly divided in halves between three great companies existing under the laws of New York on the one side and the remaining companies on the other. The problem of State regulation of insurance has become one of overshadowing importance. It calls for calm, courageous and intelligent treatment. We must aim to cure, not to kill; to preserve, not to tear down. Great companies have, in the past ten years, been heaping up riches almost beyond the dreams of avarice. They deal with amounts rivaling in magnitude the cost and indebtedness of national governments. The average policy holder has rested content in a belief in their financial soundness and in the integrity of their managers. Self denial, prudence, foresight and a desire to protect the family and to provide for old age have given a ready ear to the eager and persistent solicitations of lavishly paid agents, until the hopes and fears of our people find general expression in their life insurance investments. This enormous business has been done under laws most generous to

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the companies. While the State permits none to transact the business of life insurance within its borders without an official certificate of authorization and provides for the examination of the officers and agents of such companies under oath with reference to their business, such examinations are conducted with a view to ascertaining solvency and not for the purpose of otherwise interfering with the discretion of the directors in making investments, paying salaries, distributing surpluses and other matters involving the internal management of a solvent company. It is to the credit of the State that no insurance company has failed in recent years.

State supervision, not State regulation, has been authorized by law, yet inconsistently enough section 56 of the Insurance Law guards the companies from any but State action which shall interfere in any way with the prosecution of the business of said companies through the equitable remedies of accounting or injunction.

The courts have been no less liberal than the Legislature. They have decided that the holder of a policy, even in a mutual company, is in no sense a partner of the corporation which issued the policy; that the relation between the policy holder and the company is one of contract, measured by the terms of the policy; that upon the payment of premiums the money immediately becomes the property of the company and no title thereto remains in any of the policy holders; that no trust relation exists between company and policy holders and that no distribution of the surplus can be compelled by a policy holder, except where wrongdoing or mistake is affirmatively alleged and proved. The officers and managers of life insurance companies have been permitted, without let or hindrance, to fix the terms of the contract and to

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determine how much of the surplus should be distributed to policy holders, and when, and how much retained by the company. Funds have continued to grow until their control for speculative purposes and various subsidiary enterprises has been enough to make vast fortunes for their custodians and until princely salaries have become trifling compared with the magnificent total of assets. The bitter struggle for the control of the Equitable last winter brought scandal and discredit upon great managers of the insurance business, and aroused the public from confidence and indifference to the keenest interest in the subject. The policy holder now demands something better from the State than a guarantee of solvency. He has learned that his insurance will be cheaper and safer when the companies are compelled to invest their assets for his benefit exclusively, and are prevented from diverting funds to the individual undertakings of speculative directors and to the payment of vast salaries and exorbitant commissions, gratuities to men of influence and contributions for political campaign purposes. He invokes the power of the State to shield him more effectively and to curb the companies and their directors.

It is improper for me at this time to anticipate the report of your committee which has conducted its trying duties with ability, courage and success, nor shall I seek to outline a new insurance law. Legislative action prior to the presentation of the report would be injudicious and premature.

You will be called upon to make a radical revision of the law for the benefit of investors in life insurance and for the regulation and restraint of the companies. We may well consider at this time the expediency of providing for more thorough regulation by the Department of Insurance. Under the new insurance

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law of Germany not only are thorough investigation and publicity insured, but the government director actually enters into the business methods of the corporation. The law requires that the funds of the company be invested only in certain prescribed securities, all of which are devoid of speculative character, such as attaches to corporate stocks of every description; limits the commissions of agents and regulates with much detail the management of the companies. We can learn much from a careful examination of this law, although some of its provisions may be deemed too paternal for our differing conditions of business and political life or objectionable as leaving too much to the discretion of the insurance department.

The funds of insurance companies should sacredly be safeguarded for the policy holders by the State and every element of personal gain eliminated from their management. To accomplish this result it has been suggested that large amounts ought, for the safety of the insured as well as for the good of the community, to be invested in bonds secured by mortgages on real estate at a conservative valuation; that deposits with or loans to moneyed corporations should be subject to suitable restrictions; that the control of subsidiary companies should not be permitted; that insurance directors should have no conflicting business connections; that investments in corporate bonds should be regulated so as to prevent speculation and loss from an attempt to float doubtful enterprises; that policies should be of standard forms so that the abuses arising from ambiguity, complexity and incompleteness of the contract may be eradicated and the contract made definite in form and substance; that a uniform system of audits and accounts should be prescribed by the Insurance Department; that full publicity to policy holders should be assured;

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that deferred dividend policies should be prohibited or greatly restricted; that policies should be further safeguarded from forfeiture; that an equitable distribution of the gains of the company to the policy holders entitled thereto should be required; that policy holders should have an effective voice in the government of the companies and that the discretion of the directors should be subject to judicial or administrative review.

The eyes of the whole world are now turned towards New York and if this Legislature does not produce an insurance law which shall be drastic but practicable, radical but sane, in a spirit which shall be courageous but not hysterical, it will fail to meet the expectations of those who have confidence in the ability of popular government to solve its own problems as they arise.

Future effective action by Congress or the Federal Government is not probable and the possibility of such action should not retard for an instant the work of the State.

While life insurance has received almost exclusive attention it cannot be assumed that other corporations dealing in indemnity and investment contracts have been blameless, and a word of caution may not be amiss regarding assessment associations, accident insurance companies, co-operative fire insurance companies and the like. Better allow free and unregulated insurance than permit such concerns to exist under laws which do not protect our citizens but enable the promoter of doubtful schemes to beguile the investor to financial disappointment and fatten himself on false promises and deluded hopes.

CANALS.

A total of 3,226,896 tons was carried on all the canals of the State during the season of 1905, in comparison with 3,138,605 tons carried in 1904; a gain of 88,291 tons. From a financial

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standpoint the past season is the best that boatmen have known in many years, although the total of tons carried was less than in any previous year excepting 1904. Profitable rates were paid, not only on way traffic but on through freight. Railroad congestion of through freight contributed to this condition, not alone in supplying an abundance of freight to be carried, but also in forcing a greatly increased rate until, during the last month of navigation, boatmen received five cents a bushel for carrying grain from Buffalo to New York. The slight increase in tonnage over last year does not completely reflect the improved condition, so far as canal traffic is concerned. There has seldom been so little interruption to navigation. The structures have been maintained in good operating order, and there has been at all times a sufficient supply of water. From a physical standpoint, as the canals have been operated, there is no doubt but that a total of 10,000,000 tons could have been handled, and this amount of freight could have been secured by the canals but for the lack of seaworthy boats. The number of boats constructed annually during the last ten years has shown a constant decrease, and during the last five years the number of new boats added has not exceeded from six to ten in any one year. Older craft have been rapidly going out of commission, and a large number of boats navigating the canals are so dilapidated as not to be accepted as insurance risks.

The total appropriations for the fiscal year 1905-6 for lock tending and ordinary and extraordinary repair purposes were $170,000 less than the amount appropriated for the previous fiscal year. I believe that all legitimate demands will be met if $75,000 less shall be appropriated for these purposes by this Legislature than was appropriated last year. Such expenditures

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only as are necessary to maintain the present waterways until such time as the barge canal shall be available for traffic should be made. That economies may be effected without injury to the operation of the canals is well illustrated by the results accomplished on the Black River canal. This canal previous to 1905 was operated as two sections, which have been consolidated, with the result that the cost of maintenance and operation has been reduced from $36,380.23 in eight months of 1904 to $25,897.14 in the corresponding months of 1905; a saving of $10,483.09, or over 28.8 per cent. having been made without any loss in efficiency of operation.

BARGE CANAL WORK.

The total of obligations incurred and expenditures made by the Superintendent of Public Works up to December 4, 1905, for expenditures through his department on account of the barge canal, is $4,368,034.21. This includes an item of $39,586 for expenditures on account of the board of appraisers and examiners, consisting of three persons who are provided with a secretary, and who were appointed pursuant to chapter 335 of the Laws of 1904. This board is given no power to settle with land owners absolutely, but may merely negotiate and recommend settlements. The total amount of land appropriated for barge canal purposes for the six contracts already awarded is about 2,100 acres. Of this amount the board of appraisers and examiners has made agreements for and the Canal Board has approved the purchase of about 71 parcels, containing about 475 acres having a value of about $116,000. It would seem that this machinery is unnecessarily expensive and unwieldy, and that the work, both of examination and appraisal and of negotiating settlements, might better be done by single individuals working in an unostentatious manner after the method followed by railway companies in secur-

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ing their right of way. While the gentlemen composing the board of appraisers have doubtless discharged their duty in accordance with the law, it would seem that a change of the method would produce favorable results, both as to cost and efficiency.

The amendment to the Code of Civil Procedure with reference to the jurisdiction of the Court of Claims, requiring claimants to file a notice of claim within six months after the alleged claim shall have accrued and giving the Superintendent of Public Works timely notice of claims, has enabled the State successfully to defend a class of cases which heretofore have been established because of lack of proof on the part of the State.

ATTORNEY-GENERAL.

Many actions of the utmost importance have been conducted to a satisfactory conclusion by the law department of the State during the present year. In law suits relating to taxation the Attorney-General has met with gratifying success. Election frauds have been vigorously and speedily prosecuted and convictions obtained in cases of great importance. The litigations of the numerous departments have received thorough consideration.

I recommend the consideration of the enactment of appropriate legislation looking to a more economical administration of the estates of defunct corporations which have been placed in the hands of receivers in actions brought by the people through the Attorney-General upon reports of the Insurance or the Banking Department. The present system involves serious and needless expense for receivers' and attorneys' fees which often falls upon people of moderate means and results in real hardship.

I also recommend that inasmuch as assessments under the special franchise tax are made by the State Board of Tax Commissioners for the benefit of the localities only, which receive all

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the taxes due from the corporations, the law should be amended so as to relieve the Attorney-General from the difficult and exacting duties now imposed upon him of defending these assessments, and to impose the responsibility and expense upon the localities that reap the benefits of the tax.

ELECTION REFORM.

Experience constantly points the way to the revision if not to the improvement of our election methods and laws. The tendency is properly towards honesty, secrecy and simplicity. Corrupt practices are now rigidly prohibited by the Penal Code. Faithful officials backed by patriotic citizens have been able to do much to purify the ballot and lessen the cost of elections, without the aid of additional legislation.

The new corrupt practice acts, modeled on the English statute, limit the legal expenses of candidates, call for sworn itemized statements from political committees of moneys expended by them, and permit a defeated candidate or an elector to secure a judicial investigation of any alleged case of corrupt practices at elections, the charge, if sustained, to invalidate the election and disqualify the guilty candidate. The object of such legislation is meritorious and meets my cordial approval. It must be remembered, however, that the adoption of such a measure, ideal in its terms and stringent in its provisions, will serve to eliminate or reduce corruption and venality and guarantee that public officers shall be chosen solely for ability and honesty only so far as it is in practical accord with public sentiment.

I recommend to your careful study the operation of such laws in other jurisdictions.

Political contributions by business corporations are illegal and *ultra vires*. No such corporation exists which includes among

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its lawful purposes the right to donate its moneys to influence an election. The practice is morally, as well as legally, wrong. The entity known as a corporation can have no political principles to sustain aside from those of the individuals who compose it. Its contributions are influenced by business and not by patriotism, and like other investments, are made in the hope and expectation of financial return or to avert threatened pecuniary injury. I recommend that the making of political payments by corporations be made a penal offense and that all officers and agents of such corporations knowing or approving thereof be subject to fine and imprisonment.

A growing sentiment exists in favor of direct nominations for political office, without the intervention of nominating conventions more or less remote from popular control. It is urged that direct primaries call out a more genuine expression of the desires of the electorate, with greater freedom from boss control than the present system, bring party candidates nearer to the people and make them more directly responsible to the people. The object is praiseworthy and deserves recognition.

The new method as at present developed has grave faults as well as attractive features and a careful consideration of the effect of primary laws of other States should precede any attempt to model legislation thereon. While every inducement should be offered to the citizen to participate in the making of party nominations, our greatest need is not more laws but better morals, more respect for the spirit of law, and greater readiness to perform the duties of citizenship.

The ballot law should be simplified wherever possible, so as to permit the voter easily to give free expression to his intent without danger of vitiating his ballot.

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CONSTITUTIONAL AMENDMENTS.

Seven amendments to the fundamental law of the State of great importance were adopted by the people at the recent election and became a part of the Constitution on January 1st. For the most part, these amendments gave rise to but little discussion and it is not strange that many electors, unable to act intelligently upon them, refrained from voting.

The practice is not to be commended of submitting numerous, disconnected and complicated constitutional amendments to popular vote, as in the case of four of the seven voted on, two years after their final approval by the Legislature, without the aid of an address to the people explaining their purpose and object. The provision that a majority of the electors voting thereon shall be sufficient to ratify constitutional amendments is necessary and salutary, but greater care should be taken to call forth a large and intelligent vote.

The amendments may be briefly summarized as follows:

State Debt.—Article VII, section 10, as amended, provides that, in the future, provision may be made for the payment of the principal of any State debt, authorized by the people, within fifty years (instead of eighteen years, as formerly) from the time of the contracting thereof, and also allows the Legislature to provide for the issue of bonds to run for a period not exceeding fifty years in lieu of bonds heretofore authorized but not issued; and article VII, section 11, permits the Legislature, when the revenues from indirect taxation are adequate in amount, to reduce and in time to abolish the direct annual tax which the Constitution has previously required to be levied to pay the principal and interest of such debts. The Legislature should, in my judgment, avail itself of the authority conferred upon it by these amendments.

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Judiciary.—The amendment to article VI, section 2, is self-operative and permits an appellate division justice to hold terms of court in any other department of the State while not actually engaged in performing the duties of such appellate justice in the department to which he is designated.

This is a minor measure of relief for crowded court calendars as compared with the amendment to section 1 of article VI, permitting the Legislature from time to time to increase the number of justices in any judicial district in accordance with the population thereof.

The office of justice of the Supreme Court is one of the highest dignity and importance. The right of the citizen to a speedy determination of litigation is sacred and the law's delays are a scandal to the State. The taxpayers, who are supporting the judiciary, are entitled to call upon the courts to decide questions concerning which they cannot agree with their adversaries, and they should not be put to the alternative of making sacrifices or waiting several years for a judicial decision on the merits of their claims. The Legislature should proceed under this amendment with an eye single to the correction of evils due to an inadequate judiciary and with no thought of multiplying unnecessarily the number of justices to gratify the ambitions of impatient aspirants to the bench in districts now adequately provided for. The amendment is permissive merely. The authority it confers need not be exercised at once or in full. I recommend that a bill be framed with due consideration of the needs of each locality and with proper respect for the dignity of the judicial office.

The same amendment permits the Legislature to erect a new judicial district out of the second judicial district as now constituted.

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Labor.—The Legislature may now regulate and fix "the wages or salaries, the hours of work or labor, and make provision for the protection, welfare and safety of persons employed by the State, or by any contractor or subcontractor performing work, labor or services for the State, or for any county, city, town, village or other civil division thereof."

Improvement of highways.—The Legislature may, under section 12, added to article VII, create a debt, or debts, for the improvement of highways, not exceeding in the aggregate at any one time the sum of $50,000,000. Ample provision is hereby made for payment by the State of its share of the cost of good roads, without the large appropriations from annual revenues which would otherwise be necessary to carry on the work under existing laws. I renew my recommendation of last year that the work of highway improvement be done in a thoroughly scientific manner under a comprehensive and symmetrical plan, so that permanent public works of real value shall result, and I also suggest that shade trees be planted along all improved roads for their protection and adornment, and that provision for the elimination of grade crossings be included in the plan of highway improvement, whenever practicable.

Debt limitation of New York city.—A self-operating amendment to article VIII, section 10, permits the city of New York to incur debts for the supply of water which shall not be included in determining the debt limitation of said city.

ALTERATION OF SENATE DISTRICTS AND APPORTIONMENT OF ASSEMBLYMEN.

The Constitution directs that at the first regular session after the return of every enumeration of the inhabitants of the State, the Legislature shall alter the Senate districts and reapportion

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the members of Assembly in accordance with the procedure set forth in detail in sections 4 and 5 of article III. This duty will, no doubt, receive the prompt and careful attention that its importance demands. The rule of apportionment is clear and definite. It aims to prevent gerrymandering and to produce, as near as may be, entire equality in the distribution of political power throughout the State.

PROTECTION TO NIAGARA FALLS.

More than twenty years ago the State of New York sought to redeem the falls of Niagara from vandalism by restoring the surrounding scenery to its primeval beauty and creating a State reservation as a free pleasure ground for the people. It has spent large sums of money in the establishment and maintenance of the reservation and many thousands of visitors enjoy its privileges yearly. This State and the Dominion of Canada have in the past been engaged in an unworthy rivalry in granting franchises of incalculable value to power development companies, permitting them to take water from the Niagara river above the falls for commercial purposes. The privileges granted to these companies now constitute a real menace to Niagara. The State of New York cannot carry on the work of preservation effectively without the aid of an international agreement to protect the cataract and the river from spoliation. It can, however, in some degree repair the mischief already done (1) by limiting the amount of water which may be taken from the river by the New York companies now engaged in developing power, (2) by repealing all undeveloped charters, of which several remain on our statute books, dormant if not defunct, and (3) by instituting legal proceedings for the forfeiture of the charters of any companies which may be guilty of misuse of their franchises or abuse or usurpation of

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powers. I earnestly desire to impress upon the Legislature a due sense of the responsibility of this State for the protection and preservation of the grandeur and beauty of Niagara falls.

LOCAL OPTION.

The Court of Appeals held some years ago that the Liquor Tax Law, like all previous excise laws, is not a "tax law" in the proper sense, as it does not have for its primary purpose the raising of revenue for the support of government, but is a law enacted under the police power, for the primary purpose of controlling and limiting the liquor traffic. The tax is for the protection of the community and not for the protection of the person from whom it is exacted. The local option provision for towns is inconsistent with a purpose to encourage the traffic or make it an ordinary source of revenue. Under this construction of the law it seems illogical for the State to impose the traffic upon cities, villages or other local civil divisions of the State, against the wishes of a majority of the inhabitants. Liquor legislation unsupported by local public sentiment is impotent, but it is entirely consistent with the theory of the law to permit any locality to vote upon the question of prohibiting the sale of liquors. The disposition to look upon the law as a great revenue producer should not bind the Legislature to its moral duty to regulate and restrain the traffic in accordance with local sentiment and to aid the localities in regulating their own policy in regard thereto.

REGULATION OF PUBLIC UTILITIES.

Private companies control our railroads, telegraphs, telephones, gas and water supplies and other services which have become necessary to the daily lives of many of our citizens. Such companies are quasi-governmental agencies, vested with the sovereign

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power to condemn private property for their uses. They are permitted to exist because the State delegates to them its functions for convenience and economy and to promote industrial development. Such corporations should be tolerated only so long as their rates are reasonable and their service prompt and efficient.

It has been suggested by a learned justice of the Supreme Court of the United States that such companies have not even the constitutional right to a profit on their investments and that while they cannot be required to do business at a loss, they may be compelled to content themselves with a return equal to the cost of operation and maintenance. So radical a theory has not been adopted, but that it should be declared from the bench of our most eminent and conservative tribunal is a significant suggestion of the power of the people to regulate public service companies, or failing therein, to exercise their functions directly through government, State or local.

In Great Britain the rate for gas in municipal plants averages 64 cents a thousand, while in a number of the cities it is as low as 50 cents. In the United States the average charge is $1.25 per thousand. It ill becomes the State to protect public service companies in extorting unjust charges from the consumer. Corporations are but associations of individuals. The act of incorporation does not make them outlaws nor deprive them of natural rights; nor, on the other hand, does it set them above the law. A careful investigation of the gas problem in New York city by a competent and conscientious legislative committee resulted in the recommendation of an 80-cent rate to be established by law. A *prima facie* case was made out. The action of the Legislature was subject to judicial review. Yet relief was refused. I urge a further consideration of this question on your part.

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STATE WATER SUPPLY COMMISSION.

The present law requires only municipal corporations to submit their plans for sources of water supply to the State board for approval. This provision should be amended so as to include persons and private corporations condemning lands for sources of public water supplies.

CHARITIES AND INSANE.

More patients have been discharged as recovered from the State hospitals for the insane during the year last past than for any year heretofore reported. The number of patients discharged in an improved condition is larger than for some years past. The net increase of our State hospital population has been the lowest for any one year of the past fifteen.

The steady improvement that has been going on in the management of the public and private charities of the State for the past ten years still continues and the institutions are for the most part in excellent condition. The United States census reports show that in no other State of the Union is such generous provision made for the care of the sick poor. Charitable institutions and hospitals for the insane cost the State upwards of eight million dollars annually, which is far in excess of the cost of any other department of the State government. The State appropriates about six million dollars for educational purposes and about one million each for its judiciary, prisons and national guard. State departments, commissions, etc., cost about one and a quarter millions annually, and the Legislature costs about the same amount. Charities and insane represent about 30 per cent. of the entire cost of the State government. The State is the greatest of modern philanthropists. It should care for, at public expense, all who are properly State charges and none who are not

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properly State charges. It should maintain its institutions for the welfare of the whole people and not for the accommodation of individuals. It should be just, rather than generous. It should maintain no palaces but only plain, comfortable, utilitarian homes. It should give equal attention to the prevention and to the care of poverty and disease.

Philanthropic people and organizations may be relied upon to sound the alarm at the first indication that our hospitals and charity homes are being exploited by politics or business. The crowded tenement, the sweat shop, child labor and kindred evils of congested centers of population warn us that health, life and decency are threatened by conditions which produce pauperism, disease and crime. If the State causes poverty, kind treatment of the pauper is a belated atonement. How to prevent insanity is a greater problem than how to treat the insane. To endeavor to prevent the unhappy conditions we are fruitlessly trying to cure or relieve to-day should be our aim.

The Craig Colony for Epileptics is in need of a large new building for the treatment of imbecile and insane epileptics and those requiring custodial care who cannot be treated to advantage by the cottage system but can better and more economically be cared for in a single building. Provision should be made for such a building, which should be plain and simple in construction but of adequate size to receive that class of epileptics still confined in the county almshouses.

LABOR.

The Department of Labor cannot adequately discharge the duties imposed upon it by law without a sufficient force of active and capable inspectors, properly remunerated. Thirty-three inspectors now inspect approximately 35,000 factories and from 10,000 to 15,000 tenements in New York city. The number, never

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too large, is less than it was prior to 1901. The department is crippled for effective work, particularly in the centers of population, where the greatest vigilance is required. It has neither the force nor the time to compel compliance with the law. I recommend such an increase in the number of factory inspectors as may be necessary to enable the Department to do systematic and thorough work. It would be well in this connection to grade salaries and make provision for the promotion of efficient and experienced employees and those possessing special qualifications.

The efficient and conscientious Commissioner of Labor advises me that the free employment bureau maintained by the State in New York city is of doubtful expediency. In effect the bureau has become an intelligence office for women domestic servants. It seems unnecessary for the State to continue to maintain this agency. State regulation and supervision of private employment agencies would have a more far-reaching and beneficial effect upon the labor situation in the State in general.

EDUCATION.

The reports from the cities and school districts throughout the State indicate a steady and healthy growth in the system along right lines. Between forty and forty-five millions of dollars have been expended by the public schools of the State, while several millions more have been expended by the private academies and colleges. Additional teachers and instructors have been employed and the increased attendance indicates the interest which the people of this State feel in educational matters. The willingness with which boards of education comply with all requirements for additional facilities in the line of buildings, apparatus and equipment is indicative of the fact that nothing short of the best educational advantages will satisfy our people.

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The number of days attendance in the high schools of the State is shown to be more than two millions greater than that of the previous year. This is partly if not largely due to the workings of the law providing free tuition in the high schools to pupils from districts where no high school is maintained.

ILLITERACY IN THE STATE.

Of our State population, ten years of age and over, 5½ per cent. can neither read nor write. There are eighteen States with a smaller percentage of illiteracy. The percentage has been precisely the same in the State of New York in the last three censuses. In 1870 it was about 7 per cent. In the country at large it is above 10 per cent. It is often assumed, apparently with undue haste, that the heaviest percentage of illiteracy is in the city of New York and among the more recent immigrants from other countries. The truth is that the percentage of illiteracy is decidedly lower in the city of New York than in several of our rural counties, and that there are more illiterate children in the State between the ages of ten and fourteen (ordinarily the last years of elementary school attendance), who are the children of native-born than of foreign-born parents. The facts are essentially the same as between the other cities and the rural districts.

The explanation is doubtless to be found in part in the superior and more convenient school accommodations in the cities, but there is some reason to think it may also be found in the more general enforcement of school attendance laws in the cities.

Certain it is that there is too much illiteracy in the State. It is often much larger than in the European countries with which we would be disposed to be compared. The figures for exact comparisons do not seem to be available, but such as we have seem to show too clearly that the percentage of adult illiteracy in

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the State of New York is slightly more than in England, France, Scotland and the Netherlands, but it is fifteen times larger than in Denmark, thirteen times larger than in Switzerland, and twenty times larger than in Norway and Sweden and the great German Empire.

We ought at least to do as well as the best of them in raising the uniform intellectual level. Whatever is done in the schools should be exactly done and should relate to the conditions in which the people live and the vocations which they are to follow. The rate of illiteracy will be reduced by perfecting and enforcing the Compulsory School Attendance Law and the Child Labor Law. To these ends the interest of the Legislature is earnestly invited.

PUBLIC HEALTH.

The State Department of Health is charged by law with functions of vital importance. The prevention and control of epidemics; the inspection of food and drink to prevent the sale of adulterated articles; the examination of plans for sewerage and sewage disposal, and the prevention and suppression of the pollution of public water supplies are a few of the more important of such functions. This work cannot be done without sufficient appropriations. It deals intimately with the usefulness and comfort of the people. The State has imposed these duties upon the Department and should provide adequately therefor. Readiness to prohibit and reluctance to make the prohibition effective are companion vices of our legislation. They result in a lamentable array of commendable but emasculated statutes, which should be vitalized or repealed.

AGRICULTURE.

The decrease of our rural population, which has gone on steadily for many years, must be checked, if any practicable method can be devised, in order to counteract the drift of popu-

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lation to the city and to prevent the depreciation of farm values. Intensive agriculture must take the place of the old-fashioned methods, now adapted only to large farms of high natural productivity. We should produce more milk, cream, butter, poultry, eggs and fruits. Scientific instruction in modern methods serves to elevate and dignify the farmer's vocation and make it more remunerative and agreeable.

The State Fair, under the management of the State Fair Commission, has shown rapid development in all its departments. The number of the exhibits and the attendance have steadily increased. Notwithstanding the unfavorable weather, the attendance last year was larger than ever before—exceeding 50,000 on a single day. The Commission was able to turn back to the State Treasury last year more than $28,000.

The fair has outgrown the present accommodations. The buildings are inadequate in number and size and are ill-adapted properly to house the exhibits. In consequence a large proportion of such exhibits have to be placed in tents and temporary structures.

The time seems to be near when a comprehensive plan should be prepared and adopted for the construction of a new, harmonious and complete system of modern permanent buildings adequate to the needs of the various departments of the fair. Much has been done to emphasize and to maintain the commercial, financial and industrial supremacy of the State; the same encouragement should be extended to the development of our great agricultural interests.

FOREST, FISH AND GAME COMMISSION.

This Department offers an ample field for the activities not only of the lover of open-air sports and pastimes, but also of the administrative officer, having in charge vast property holdings of the State, which must be kept free from unlicensed intrusion

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and which might be made a source of revenue to the State. Governor Black said, in 1898, that "the time will come when the State will reap a large revenue for itself and still retain the woods, open to the public, protecting the sources of water, growing and yielding under intelligent cultivation." It is to be trusted that the State will not forever ignore the theory and practice of scientific forestry and that it will not only protect the wilderness constituting the Forest Preserve in its natural state, but will also encourage by precept and example the cultivation of forest tracts for economical purposes. No department calls for more unselfish devotion to the interests of the State. It should be administered, as I believe it now is, primarily with a view to the protection of our forests, fish and game, and secondarily with a view to making the Department more nearly self-sustaining through the vigorous prosecution of wrong-doers and through the development of revenue features.

The Forest, Fish and Game Law is confusing, because it includes many amendments incorporated in it at different times. It should be carefully recodified and made clear and consistent and as permanent as possible.

PRISONS AND PENAL LEGISLATION.

I have appointed, under the provisions of chapter 718, Laws of 1905, a commission to inquire as to the most practical methods of providing modern prison buildings, which commission will report to the Legislature on or before the 1st day of February, 1906.

I have also appointed, under the provisions of chapter 714, Laws of 1905, a commission to make inquiry into the operation of the probation system of the State and report to the Legislature thereon.

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The reports of these commissions should be of great value. The State should carefully frame its system of sentencing, releasing on parole, and caring for prisoners in penal institutions so that crime may be lessened and that punishments may tend toward reformation rather than retribution.

Your attention is directed to what seems an anomalous condition in regard to our laws regulating the punishment of boys, sixteen years of age and over, convicted of misdemeanors. No class needs reformatory treatment and trade instruction more than these boys, of whom some ten thousand are committed annually to jails and penitentiaries, because no other provision is made for them. Youthful male felons may be sent to Elmira; boys under the age of sixteen may be sent to Randall's Island or Rochester; girls and young women to Hudson, Albion or Bedford. Some provision should be made to save these boys from permanent criminal careers and keep them out of jails and penitentiaries, where they can receive no reformatory treatment. The county penitentiaries might be taken under State control and one or more of them utilized for this purpose. No good reason seems to exist for dividing between State and county the charge of persons convicted of crime. All such have sinned against the State and should be under State supervision. The population of the penitentiaries has decreased from 4,608 in 1895 to 2,229 in 1905, a decrease of more than 50 per cent. The jails should be used only for the detention of civil prisoners and persons awaiting trial and possibly petty misdemeanants sentenced for short terms for public intoxication and minor offenses.

MASSACHUSETTS-NEW YORK BOUNDARY LINE.

The State Engineer and Surveyor, in cooperation with the Commonwealth of Massachusetts, relocated and remonumented

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the entire boundary line between New York and Massachusetts as long ago as 1899. Bills were introduced at the first session thereafter in the Legislature of both States establishing the boundary line. The Massachusetts bill became a law to "take effect when an act shall have been passed by the State of New York establishing the line." The New York bill was never progressed. In view of the cost and importance of the work it seems desirable that this State should adopt the line thus established. It involves jurisdiction over a wedge of land fifty-eight feet wide and the question should be forever settled without delay.

SPECIAL LEGISLATION.

The Constitution provides that private and local bills shall not be passed in certain enumerated cases. Equally objectionable are bills granting corporate charters where the objects of the corporation could be obtained under general laws; bills legalizing bond issues, of which the number is increasing yearly; bills changing names of corporations; private claim and escheat bills; private bills legalizing acts of notaries public and other officers, and bills private or local in their purpose but general in form. Except in rare instances general legislation can be drafted to cover all proper cases. Unnecessary special statutes not only needlessly swell the volume of laws, but also disregard the salutary maxim of "Equal rights to all, special privileges to none." The expense of passing private bills should be borne by the parties in interest and not by the State.

WORK AND EARLY ADJOURNMENT.

I would urge upon the Legislature the importance of beginning serious work at once in order that the labors of the session may not be unnecessarily prolonged. Last winter only 24 of the 760

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laws were approved before March 1st; only 103 were approved in the month of March. The number of thirty-day bills was 594, of which 384 became law, making more than one-half of the total for the year.

The rush of the close of the session prevents proper consideration and leaves an indigestible mass of bills to be disposed of by the Governor after adjournment. Both the Legislature and the Governor should have a better understanding of proposed legislation than is possible when hurry and confusion prevail.

Much time would be saved and the recall of bills for amendment would often be avoided by more careful reading of bills before final passage, and the correction of typographical and other errors.

FRANK W. HIGGINS.

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